Supreme Court of the United States

OCTOBER TERM, 1950

No. 531

DALLAS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3. *et al*,
Petitioners,

v.

CITY OF DALLAS, *et al*,
Respondents.

RESPONDENTS' BRIEF IN ANSWER TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Supreme Court of the United States:

Your Respondents are the City of Dallas, a municipal corporation, the Mayor and Eight Councilmen, who compose the Governing Body of the City of Dallas, and are sued in that capacity.

The Petitioners are composed of a municipal corporation, Dallas County Water Control and Improvement District No. 3, with limited municipal powers, its official Board, and certain individuals as taxpayers in the District.

SUMMARY STATEMENT

The Summary Statement of the case made by the Petitioners contains matters not in the record and for that reason, Respondents submit what the record reflects is the nature of this suit and the issues involved.

Petitioners filed this suit for an injunction and to declare void an Ordinance of the City of Dallas annexing the area, including the Dallas County Water Control and Improvement District No. 3 and other territory outside of said District, to the City of Dallas on the theory that Section 2, Article 1175, Revised Civil Statutes of Texas, 1925, Section 4a of the Charter of the City of Dallas and Article 1182c-1, Vernon's Annotated Civil Statutes, are invalid.

Upon a hearing on Verified Bill and Answer and Cross-Bill of the City of Dallas, and after hearing evidence, the Trial Court rendered judgment sustaining the validity of the above mentioned State statutes and the Charter provision of the City of Dallas and granted relief to the City of Dallas on its Cross-Bill from which judgment, Petitioners elected to appeal directly to the Supreme Court of Texas under authority of *Article 1738a, Vernon's Annotated Civil Statutes*, instead of appealing to the Court of Civil Appeals as provided for by *Article 1819, Revised Civil Statutes of Texas, 1925.* By such direct appeal Petitioners limited their right to review only the questions of law; namely, the validity of the above mentioned State statutes and the Charter provision. The Supreme Court sustained the validity of the statutes and also the Charter provision of the City of Dallas in the case of *Dallas County Water Control and Improvement District No. 3 v. City of Dallas, 233 S. W. 2d 291.*

Petitioners' statement, page 4, Subdivisions (d), (e), (f) and (g) of the Petition, calling attention to the so-

called annexation atrocities committed by cities in Texas is wholly outside of the record and has no place in this Petition.

REPLY TO JURISDICTIONAL STATEMENT

Three (3) separate grounds are asserted under which this Court has jurisdiction. They will be dealt with in the order presented:

Under the first Ground of Jurisdiction, Petitioners state:

> "(a) It is specially set up and claimed that petitioners have been deprived of their property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, because they have been denied a full and fair hearing on the merits of this case."

That the Petitioners have not been denied due process of law under the Fourteenth Amendment to the Constitution on the alleged ground that the Supreme Court of Texas fully decided the case against them without giving them an opportunity to be heard fully on the merits, becomes obvious when we consider the nature of the suit which they have prosecuted. Under the settled law in Texas, individuals, such as the Petitioners, have no standing in Court to contest the validity or regularity of an annexation proceeding as such, because only quo warranto proceedings in the name of the State will lie to review such proceedings. See *Kuhn v. City of Yoakum, 6 S. W. 2d 91.* However, Petitioners placed their entire hope on getting relief if they could get the Court to declare invalid the two statutes and

the Charter provision which the City of Dallas used as a source of power for the annexation. Under Texas law where an annexation proceeding is based upon no law, or upon a void law, an individual can attack the proceedings collaterally just as a void judgment on its face can be attacked collaterally. See *Parks v. West, 102 Tex. 11.*

Under the second and third Grounds of Jurisdiction, Petitioners say:

> "(b) There is drawn in question the validity of statutes of the State of Texas on the grounds that they are repugnant to the Fourteenth Amendment to the Constitution of the United States; and,
>
> "(c) It is specially set up and claimed that petitioners have been deprived of their property without due process of law and have been denied the equal protection of the laws by the unlawful annexation of certain territory to the City of Dallas."

Whether or not a municipal corporation once created by the State shall have its powers enlarged or diminished, or its corporate existence abolished, or its property taken away, as directed by the statute is a political question, and the legislative fiat, or determination on this matter is final. See *Norris v. City of Waco, 57 Tex. 635.* Likewise, whether territory is annexed to a city and subject to municipal taxation presents a political question and is not a subject for judicial determination on the ground that subjecting the property to taxation does not amount to taking property without due process of law. See *Norris v. City of Waco, supra.*

Since the Legislature has the absolute power and control over the existence, or non-existence of municipal corporations and their property, under the Texas law, it is not within the power of a municipal corporation, whose corporate existence has been abolished by an act of the Legislature, or under the terms of a statute which provides for its abolishment, to invoke the due process clause of the Fourteenth Amendment. See *City of Newark v. State of New Jersey, 262 U. S. 192; City of Trenton v. State of New Jersey, 262 U. S. 182; Hunter v. Pittsburgh, 207 U. S. 161,* and *Kies v. Lowery, 199 U. S. 233.*

RESPONDENTS' BRIEF AND ANSWER TO THE CLAIM THAT FEDERAL QUESTIONS ARE PRESENTED

Petitioners enumerate four (4) specific grounds under which they claim that Federal questions are presented. We believe no Federal question is presented.

The basic questions presented are:

(1) Does the State of Texas have the power, through its Legislature, to control its municipal corporations, their existence, their powers and their property?

(2) Did the electorate of the State of Texas by amending the Constitution, enacting Article XI, Section 5, providing for Home Rule cities, have the power to grant to such Home Rule cities the authority to enlarge their boundaries on the same basis as the Legislature of the State of Texas did before the adoption of the Home Rule Amendment in 1912?

(3) Does a Home Rule city in the State of Texas under and by virtue of the authority granted by Ar-

tiele XI, Section 5, of the Constitution, have the power to annex additional territory to the city without the consent of the residents, or the property owners in said area?

(4) Are the rights of a property owner or a citizen in an area not a part of a city, or in another municipal corporation, violated within the provisions of the Fourteenth Amendment to the Constitution, when the area is either annexed to a municipality, or the municipal corporation in which the property owner or citizen lives is abolished and combined with another municipal corporation?

From a consideration of the adjudicated cases dealing with these questions by the Texas Supreme Court as a background, and the previous pronouncement of the Supreme Court of the United States on this character of questions, we believe that it is quite apparent that no Federal questions are presented by this Petition.

Prior to the amendment of the Constitution in 1912, the Legislature created, or had full power to create, or abolish, municipal corporations of all kinds. It was so expressly held by the Supreme Court of Texas in the case of *Eastham, et al. v. Steinhagen, et al., 111 Tex. 597, 243 S. W. 457*, when it construed the effect of Article XI, Section 5 of the Constitution, as adopted in 1912, using the following language:

> "The home rule amendment authorized a city of more than 5,000 inhabitants, by a majority vote of the qualified voters of the city, to adopt or amend its charter, subject to the limitations to be prescribed by the Legislature, provided that no charter nor any ordinance to be passed thereunder should be inconsistent with the Constitution or the general laws of the state.

> The Legislature promptly passed an enabling act, providing the method for the amendment or adoption of a charter by a city of more than 5,000 inhabitants, and for the organization of municipal government under the amended or new charter, and providing that a special charter previously granted a city should remain in full force until amended or superseded by a charter. Among the powers which the enabling act expressly bestowed on any city adopting a charter or amendment in accordance with its terms was 'the power to fix the boundary limits of said city'."

The Court in discussing the facts of the adoption of the Home Rule Amendment and the Enabling Act used the following language:

> "Prior to the adoption of the home rule amendment, it is undeniable that the Legislature possessed the power to so amend the 1909 charter as to have extended the limits of the city of Beaumont. Since the Legislature could repeal section 3, the same could furnish no obstacle to the exercise of this power. The home rule amendment and the enabling act transferred to the specified cities, through the agency of their qualified voters, the same power which the Legislature had theretofore possessed to change territorial boundaries, through the amendment or adoption of their charters, subject alone to the limitations expressed, which have no application in this case. Cohen v. City of Houston (Tex. Civ. App.), 176 S. W. 809; Cohen v. City of Houston (Tex. Civ. App.), 205 S. W. 757."

As to what the powers of the Legislature were over the creation and abolition of municipal corporations, or adding additional territory to the city, prior to the amendment, was decided in the case of *Norris v. City of Waco, 57 Tex. 635*, from which decision, we quote as follows:

"The legislature has declared that it was proper to embrace the property in the city limits, and that it was proper to levy a tax upon it as upon the other land within the city, for the purpose of defraying the current expenses of the municipality, and paying the interest and principal of its bonded debt.

"These were declarations which the legislature had power to make in the form of a solemn statute, having all the binding force and obligation of law, and they are to be presumed to have been made after an examination of all the facts necessary to a fair and honest determination of the question, and should be held conclusive, unless a conflict with some constitutional provision.

"As to this the courts have the power to inquire, for it involves questions judicial in character; *but what property shall be embraced within a municipal corporation*, and whether the same shall be taxed for municipal purposes, *presents questions essentially political*, which by the constitution are to be determined by the legislature, and an assumption by the judiciary of power to revise the action of the legislature in such respect would be a usurpation." (Emphasis ours.)

In the case of *Graham v. City of Greenville, 67 Tex. 62*, the Supreme Court in 1886 announced the principles which govern the Legislature in the annexation of additional territory to a city. There the Court said:

"The power of the legislature to extend the limits of a city so as to include adjoining territory is not restrained by the Constitution, and the manner of doing so is prescribed only in this respect, that in case of a city of ten thousand inhabitants or less, this change in the charter shall be effected by a general law. Without some constitutional restraint, it is now conceded almost universally, that the legislature may annex, or authorize the annexation, of con-

> tiguous territory without the consent of the persons residing in the corporation or the annexed territory. I Dillon on Municipal Corporations, section 185."

The Home Rule Amendment to the Constitution, Article XI, Section 5, has been in effect since 1912, and our Texas Supreme Court has uniformly sustained the validity of the Charter provisions providing for annexation of additional territory adopted by cities under the authority of Article XI, Section 5 of the Texas Constitution, and if necessary, under authority of Section 2, Article 1175, Revised Civil Statutes of Texas, 1925. (See *Cohen v. City of Houston, 176 S. W. 809, 205 S. W. 757; City of Houston v. State, 176 S. W. 2d 928; Allen v. City of Austin, 116 S. W. 2d 468,* and *Beyer v. Templeton, 147 Tex. 94, 212 S. W. 2d 134.*) The last mentioned case expressly sustains the validity of Section 4a of the Charter of the City of Dallas, *which is before the Court in this case.*

The decisions of the Texas Courts likewise hold that a person is not deprived of his property without due process of law by being subjected to municipal taxation, when his property is annexed to a city, without his consent, by the Legislature.

On that point in the case of *Norris v. City of Waco, 57 Tex. 635,* the Supreme Court said:

> "The constitutional inhibition against taking private property for public use without compensation to the owner has reference solely to the taking of private property for public use under the right of eminent domain * * *.
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> "When private property is taken under the taxing power, the taxpayer receives his just compensation in

> the protection which government affords to his life, liberty and property, and in the increased value of his possessions resulting from the use to which the government applies the money raised by the tax."

See also *Smallwood v. City of Dallas, 216 S. W. 2d 272.*

The Home Rule Amendment, Article XI, Section 5, of the Constitution, adopted at an election held for that purpose in 1912, as construed by the Supreme Court in the case of *Eastham v. Steinhagen, 243 S. W. 457*, is to the effect that Section 2 of Article 1175 of the Revised Civil Statutes of Texas, 1925, in matters of annexation by Home Rule cities adds nothing to the Constitution but that the Constitution itself confers upon Home Rule cities this right. (See the cases of *LeGois v. State, 80 Tex. Cr. 356, 190 S. W. 724* and *Xydias Amusement Company v. City of Houston, 185 S. W. 415, writ of error refused by the Supreme Court of Texas.*) What then is the position of the Petitioners in this case? The answer is obvious. They complain that the pepole of Texas adopted a Constitution which gives Home Rule cities certain rights and duties with reference to annexation of territory to such cities. In other words, the source of this power is the people who are governed, and Petitioners challenge the right of the majority of the citizens to write a Constitution to grant these powers. Certainly there is nothing in the Federal Constitution which would prohibit the electorate of the State of Texas from doing just exactly what it did in this case.

The decisions of the United States Supreme Court, dealing with similar questions, have uniformly held that municipal corporations are the creatures of the State and

that they can be summarily dealt with by their State Legislatures unless inhibited by their respective State Constitutions. Without burdening the Court with many quotations from cases, we believe the case of *Hunter v. Pittsburgh, 207 U. S. 161, 52 L. Ed. 151,* clearly disposes of all the contentions raised by the Petitioners in this case. The Court reviewed an Act of the Legislature of the State of Pennsylvania which provided for the consolidation of the City of Pittsburgh with the City of Allegheny and that thereafter the city would be known as the City of Pittsburgh. In considering the power of the Legislature to deal with the abolition of municipal corporations, or changing their powers or duties, the Supreme Court cited many cases and concluded it would be useless to analyze and quote therefrom; however, the Court did say that from these decisions certain principles have become settled doctrines when applied to municipal corporations as political subdivisions of the State. From this case we quote as follows:

> "Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution.

> The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it."

To the same effect are the cases of *Laramie County v. Albany County, 92 U. S. 315, 23 L. Ed. 552; Kies v. Lowery, 199 U. S. 233, 50 L. Ed. 167; Mason v. McCaffery, 179 U. S. 328, 45 L. Ed. 214;* and *Williams v. Eggleston, 170 U. S. 304, 42 L. Ed. 1047.*

The cases of *City of Trenton v. State of New Jersey, 262 U. S. 182, 67 L. Ed. 937* and *City of Newark v. State of New Jersey, 262 U. S. 192, 67 L. Ed. 943*, hold that a municipal corporation cannot raise as against the State a Federal constitutional question under the Fourteenth Amendment to the Constitution, because the State's power,

through the Legislature, over the existence of a municipal corporation and its property is absolute. In both cases the Petitions for Writ of Error were dismissed because the questions there raised did not present Federal questions.

The attack on Article 1182c-1, Vernon's Annotated Civil Statutes, as presented in this case, is grounded upon the same constitutional grounds as the validity of Section 2 of Article 1175, Revised Civil Statutes of Texas, 1925. Article 1182c-1, Vernon's Annotated Civil Statutes, was enacted by the 51st Texas Legislature and provides that if any city in the State extends its boundaries so as to include the whole of a water district, such as the Petitioner, that the annexing city succeeds to the property, rights, privileges, duties and obligations of the water district within ninety (90) days after such annexation, unless the annexing city specifies a shorter time than the ninety (90) days, and the water district becomes dissolved and inoperative. Surely the Texas Legislature having the power to create the water district, likewise has the power to provide the method how it will become abolished and inoperative. There is nothing novel in this statute, because for many years our Supreme Court has held that the Legislature has the right and power to create, subdivide or consolidate school districts and require the assumption of the existing bond debt. (See *El Dorado School District v. Tisdale, 3 S. W. 2d 420, Supreme Court; Tod v. City of Houston, 276 S. W. 419, Supreme Court; Washington Heights Independent School District v. City of Fort Worth, 251 S. W. 431;* and *Rice Consolidated School District v. City of Tyler, 219 S. W. 2d 558.*)

The case of *Kies v. Lowery, 199 U. S. 233, 50 L. Ed. 167,* decision by this Court, sustains similar statutes and acts of the Michigan Legislature.

Petitioners complain bitterly about the so-called injustices and atrocities that have been committed by Texas cities in their annexation of territory. Particularly they complain about the irregular shape or size of strip annexations. The Legislature of the State of Texas has made only one requirement as a prerequisite to annexation and that is, that the territory lie adjacent and be physically connected to the city at some point. The pattern for this character of annexation was set by the Legislature itself in 1903, when a Special Act of the Legislature was passed, which had for its purpose the consolidation of the City of Dallas with the City of Oak Cliff, which two cities were then separated by the Trinity River and its valley in excess of one mile in width. The Legislature accomplished the consolidation by field notes which described an air-line strip 300 feet in width to connect the two cities. The annexation was contested and the Texas Supreme Court sustained its validity in a quo warranto proceedings reported in *79 S. W. 1.*

The Supreme Court of Texas in the case of *City of Houston v. State, 142 Tex. 190, 176 S. W. 2d 928,* in discussing the limitation on the power of a Home Rule city to annex additional territory, used the following language:

> "It cannot be validly questioned that the power of home rule cities to extend their boundary limits is sub-

> ject to such further limitations consistent with the Home Rule Amendment as the legislature may prescribe. Art. 11, sec. 5, supra; Hunt v. Atkinson, Tex. Com. App., 18 S. W. 2d 594; Dry v. Davidson, Tex. Civ. App., 115 S. W. 2d 689, error refused; McGuire v. City of Dallas, Tex. Com. App., 170 S. W. 2d 722. *Their present power in this regard, so far as legislative action is concerned is limited only by the requirement that the territory to be used for that purpose must be adjacent to such municipality.* As pointed out in State v. City of Waxahachie, 81 Tex. 626, 17 S. W. 348, if any reasons exist for further limitations they should be addressed to the legislature." (Emphasis ours.)

The plea made by the Petitioners on these so-called injustices, we believe is amply answered by Mr. Justice Brewer in the case of *Williams v. Eggleston, 170 U. S. 304, 42 L. Ed. 1047*, as follows:

> "A municipal corporation is, so far as its purely municipal relations are concerned, simply an agency of the state for conducting the affairs of government, and as such it is subject to the control of the legislature. That body may place one part of the state under one municipal organization and another part of the state under another organization of an entirely different character. These are matters of a purely local nature, in respect to which the Federal Constitution does not limit the power of the state. 'Whether territory shall be governed for local purposes by a county, a city, or a township organization is one of the most usual and ordinary subjects of state legislation.' Kelly v. Pittsburgh, 104 U. S. 78, 81 [26: 658, 660]."

The opinion of the Supreme Court of Texas in this case (R. 60) correctly disposes of all the questions and follows a long precedent of previously decided Texas cases.

CONCLUSION

WHEREFORE, your Respondents respectfully pray that this Application for Writ of Certiorari to the Supreme Court of Texas be dismissed for want of a Federal question, as held in the case of *City of Trenton v. State of New Jersey, supra*, or in the alternative, that it be denied for want of merit.

Respectfully submitted,

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